IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.4170 OF 2005

Kishore Prabhakar Pagare & others. ... Applicants.
Versus.
State of Maharashtra. ... Respondent.

Ms.Pranali Kakade for the Applicants.
Ms.M.H.Mhatre, A.P.P. for the Respondent-State.

AND

CRIMINAL APPLICATION NO.4171 OF 2005

Mehabub Aladdin Gaffur & others. ... Applicants.
Versus.
State of Maharashtra. ... Respondent

Ms.Pranali Kakade for the Aplicants.
Ms.Rajashree Gadhvi, A.P.P. for the Respondent-State.

CORAM : ABHAY S. OKA, J.

DATED : 14th July, 2005.

P.C.:

1. Since the allegations against the Applicants in both the Applications are more or less same, both the Applications can be disposed of by a common order.

2. These are applications for anticipatory bail. Criminal Application No.4170 relates to C.R.No.288 of 2005 and Criminal Application No.4171 of 2005 relates to C.R.No.235 of 2005. Both the offences are registered at the same Police Station. In so far as C.R.No.228 of 2005 is concerned, the first informant is one Santosh Kale who is the Manager of Bank of Baroda, Ashok Nagar Branch. His allegation is that one Sunil Anthony, Proprietor of M/s.Eureka Constructions executed

agreements for sale in favour of the Applicants and other co-accused in respect of different flats. It is stated by the first informant that the Applicants have taken loan from his Bank for purchasing one flat each and they have purchased more than one flat in the same project from the same builder. The allegation is that some of the flats purchased by the Applicants and other accused have been sold to some other persons by the builder.

3. In so far as C.R.No.235 of 2005 is concerned, the same is filed by one Smt.Usha Laxman Khamkar who is the Chief Manager of Bank of Baroda, Senapati Bapat Road. The allegation made by her against the Applicants are of similar in nature in respect of the agreements executed by Sunil Anthony.

4. The learned Counsel appearing for the Applicants in both the Applications submitted that similarly placed three co-accused in C.R.No.228 of 2005 have been enlarged on anticipatory bail under the orders of the Sessions Court, Pune, passed on 2nd July 2005. The learned Counsel further submitted that the Applicants in both the Applicants are Central Government employees and after they entered into agreements with the builder in respect of the flats in question, they have not been put in possession. She submitted that by reason of parity, the Applicants are entitled to anticipatory bail as they

have not committed any offence.

5. I have heard the learned A.P.P. in both the Applications. The learned A.P.P. contended that the Applicants have conspired with the builder and obtained loan from the Bank. The learned A.P.P. contended that the Applicants have received a part of the loan amount from the Builder. She submitted that as the Applicants have not made any grievance of non-delivery of possession of the flats, it is obvious that the Applicants are hand-in-glove with the builder. The said fact is also clear from the record as the same flats have been sold by the Builder to other persons.

6. The three co-Accused viz. Anil Bhaskar Kothamasi, Mohan Pillay, Ashok Pandurange Banne, have been enlarged on bail by the Sessions Court by order dated 2nd July 2005. A perusal of the F.I.R. shows that the case of the prosecution against the Applicants herein and the said Applicants in the Sessions Court who were enlarged on bail is the same. The learned A.P.P. on instructions of the concerned Officer did not dispute that as per usual practice of the bank, the loan amount was paid directly to the builder and not to the Applicants herein who are the flat purchasers. The only contention raised by the learned A.P.P. is that out of the loan amount received by the builder the Applicants have been paid some part. As of today, there is no

material on record to show that any amount has come to the Applicant from the builder. As the position stands, the entire loan amount was given to the Builder and not to the Applicants. The Applicants are Government employees. The case of the Applicants is on par with Anil Kothamasi and two others who are enlarged on anticipatory bail by the Sessions Court. No criminal antecedents of the Applicants have been placed on record. As they are Government employees it is difficult to say that they will abscond.

7. In view of the above, the following order is passed:

(i) In the event of the arrest of the Applicants in connection with C.R.No. 228/2005 and C.R.No.235/2005 of Chaturshringi Police Station, the Applicants shall be enlarged on bail subject to furnishing P.R.Bond in the sum of Rs.15,000/- each with one surety in like amount.

(ii) The Bail is granted subject to condition that the Applicants will attend the Chaturshringi Police Station on every Sunday between 1.00 a.m. and 12.00 noon till filing of the charge sheet.

(iii) The Bail is granted subject to condition that the Applicants shall not, directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of accusation against him so as to dissuade him from disclosing such facts to the Court or to the Police Officer/ Investigating Agency. The Applicant shall not tamper with the prosecution evidence.

(iv) Any observation made in this order shall not be construed as any finding or any expression of opinion on the merits of the case at the time of trial.

(v) This order will enure to the benefit of the Applicants only till charge sheet is filed. Thereafter they will be free to apply to the appropriate Court for appropriate relief.

(vi) Applications are disposed of in above terms.

(vii) The parties to act upon an authenticated copy of this order.

Judge.